

Office of Chief Counsel  
Internal Revenue Service  
**memorandum**

CC:NER:MIC:DET:TL-N-2507-00  
MELueck

date:

to: Territory Manager, Retailers, Food & Pharmaceuticals  
Attention: Sherry Holderby, Team Manager

from: District Counsel, Michigan District, Detroit

subject: [REDACTED], Credit Elect Carryforward

This memorandum responds to your request for assistance regarding the treatment of credit elects. Our advice is subject to post-review by our National Office. Accordingly, the advice should not be relied upon for a period of 30 days.

**DISCLOSURE STATEMENT**

This advice constitutes return information subject to I.R.C. § 6103. This advice contains confidential information subject to attorney-client and deliberative process privileges and if prepared in contemplation of litigation, subject to the attorney work product privilege. Accordingly, the recipient of this document may provide it to those persons whose official tax administration duties with respect to this case require such disclosure. In no event may this document be provided to Collection, Appeals or other persons beyond those specifically indicated in this statement. This advice may not be disclosed to taxpayers or their representatives.

This advice is not binding on Examination or Appeals and is not a final case determination. Such advice is advisory and does not resolve Service position on an issue or provide the basis for closing a case. The determination of the Service in the case is to be made through the exercise of the independent judgment of the office with jurisdiction over the case.

**FACTS**

[REDACTED] (hereinafter "[REDACTED]") manufactures and sells automobile parts. [REDACTED] files its tax return on a calendar year basis. On [REDACTED], [REDACTED] filed a request with the Internal Revenue Service (hereinafter "the Service") to extend the due date for filing its [REDACTED] federal income tax return to [REDACTED]. Prior to [REDACTED], the time by which [REDACTED] was required to meet its [REDACTED] federal tax obligation, [REDACTED]

had paid, through estimated tax payments and a [REDACTED] credit, \$[REDACTED]. On [REDACTED], [REDACTED] filed its [REDACTED] federal tax return showing a liability of \$[REDACTED] and hence an overpayment of \$[REDACTED]. [REDACTED] elected to credit the overpayment to its tax liability for the [REDACTED] tax year.

During [REDACTED], [REDACTED] made estimated tax payments as follows:

<u>Date</u>	<u>Amount paid</u>	<u>Amount required</u>	<u>Over/under pmt</u>
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	(\$ [REDACTED])
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
[REDACTED]	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]
Totals	\$ [REDACTED]	\$ [REDACTED]	\$ [REDACTED]

Prior to [REDACTED], the due date of its [REDACTED] federal tax return, [REDACTED] had paid \$[REDACTED]. This amount represents the total of [REDACTED]'s [REDACTED] estimated tax payments, [REDACTED] credit elect, and a refundable credit. On [REDACTED], [REDACTED] filed its [REDACTED] federal tax return showing a liability of \$[REDACTED] and hence an overpayment of \$[REDACTED]. [REDACTED] elected to credit the overpayment to its tax liability for the [REDACTED] tax year.

The Service later examined [REDACTED]'s [REDACTED] federal tax return and determined that [REDACTED]'s actual liability for [REDACTED] was \$[REDACTED], not the \$[REDACTED] [REDACTED] originally reported. On [REDACTED], the Service assessed a deficiency in the amount of \$[REDACTED] against [REDACTED] for the [REDACTED] tax year.

#### ISSUE

Whether interest begins to accrue on a deficiency in tax on the due date of the succeeding year's federal income tax return when the taxpayer elected to apply a credit from the year of the deficiency to the succeeding year's estimated taxes and such credit was not applied in full to any of the succeeding year's estimated tax payments.

#### CONCLUSION

Yes. Interest begins to accrue on the earlier of the date the credit is applied to a taxpayer's estimated taxes for the succeeding year or the due date of the succeeding year's income tax return. In this case, the taxpayer's credit was never fully applied to the taxpayer's estimated taxes in the succeeding year, therefore, interest begins to accrue on the due date of the succeeding year's federal income tax return.

## LAW

Section 6601(a) of the Internal Revenue Code provides that if any amount of tax is not paid on or before the last date prescribed for payment, interest will be paid on the amount from such last date to the date paid. Section 6151(a) provides, in general, that the date prescribed for payment is the time fixed for filing the return, determined without regard to any extension of time for filing. Section 6601(b)(1) provides that for determining interest on underpayments, the "last date prescribed for payment" is determined without regard to any extension of time for payment or filing.

Section 6402(b) states that the Secretary is authorized to prescribe regulations providing for the crediting against the estimated tax for any taxable year of the amount determined by the taxpayer or the Secretary to be an overpayment of the income tax for the preceding taxable year.

Section 301.6402-3(a)(5) of the Regulations on Procedure and Administration provides that a taxpayer may elect to apply all or part of the overpayment shown by its return to its estimated tax for the succeeding tax year by so indicating on its return. No interest is allowed on the portion of the overpayment credited and the amount of the credit is applied as a payment on account of the estimated income tax for the year or the installments thereof. See also § 301.6611-1(h)(2)(vii).

In Rev. Rul. 77-475, 1977-2 C.B. 476, revoked by Rev. Rul. 83-111, 1983-2 C.B. 245, reinstated and modified by Rev. Rul. 84-58, the Service held that if an overpayment of income tax for a taxable year occurs on or before the due date of the first installment of estimated tax for the succeeding taxable year, the overpayment is available for credit against any installment of estimated tax for such succeeding taxable year and will be credited in accordance with the taxpayer's election. If the overpayment occurs after the due date of the first installment of estimated tax for the succeeding taxable year, it may be credited only against an installment of estimated tax due on or after the date the overpayment was made. Under these circumstances, § 6655(b)(3) provides that a payment of estimated tax by a corporation is credited against unpaid required installments in the order in which the installments are required to be paid. Section 6654(b)(3) provides the same rule for individuals.

Rev. Rul. 84-58, 1984-1 C.B. 254, holds that for returns filed after December 31, 1983, when a taxpayer elects to have an income tax overpayment credited against the succeeding year's estimated tax, the Service will apply overpayments arising on or before the due date of the return against the first installment payment of the succeeding year's estimated tax, unless the taxpayer requests that it be applied to a later installment.

Rev. Rul. 88-98, 1988-2 C.B. 356, holds that when a taxpayer claims an overpayment on a return filed either on the original due date or on extension, and the claimed overpayment is applied in full against an installment of the succeeding year's estimated tax, interest on a subsequently determined deficiency for the earlier year runs from the due date of that installment on the part of the deficiency that is equal to or less than the claimed overpayment and from the original due date of the return on the remainder. Rev. Rul. 88-98 follows Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978), in which the court interpreted § 6601(a) to mean that interest on a deficiency can only be charged when the tax is both due and unpaid. The date the overpayment becomes a payment on account of the succeeding year's estimated tax determines the date the prior year's tax became unpaid for purposes of § 6601(a). Prior to that date the government has the use of the funds with respect to the prior year's tax, and no interest is payable on the overpayment that is the subject of the taxpayer's election. See §§ 301.6402-3(a)(5) and 301.6611-1(h)(2)(vii).

Rev. Rul. 99-40, I.R.B. 1999-40, states "[w]hen a taxpayer elects to apply an overpayment to a succeeding year's estimated taxes, the overpayment is applied to unpaid installments of estimated tax due on or after the date(s) the overpayment arose, in the order in which they are required to be paid to avoid an addition to tax for failure to pay estimated income tax under [I.R.C. §§ 6654 or 6655] with respect to such year."

#### ANALYSIS

Interest begins to accrue at the time a tax is both due and unpaid. Avon Products, Inc. v. United States, 588 F.2d 342 (2d Cir. 1978). The time at which a tax is unpaid was addressed by the court of federal claims in May Dep't Stores Co. v. United States, 36 Fed. Cl. 680 (1996). In May Dep't Stores Co., the taxpayer had a credit for a year in which the Service assessed a deficiency. As in this case, the deficiency in May Dep't Stores Co. was assessed several years later. The Service followed Revenue Ruling 84-58, 1984-1 C.B. 254, and collected the deficiency and interest accruing from the due date of the taxpayer's first estimated tax payment. The taxpayer filed suit

in the United States Court of Federal Claims seeking a refund of interest paid on the deficiency. The court held that interest does not accrue from the due date of the succeeding year's first estimated tax payment unless the taxpayer has underpaid such payment. On August 4, 1997 the Service acquiesced in the May Dep't Stores decision. May Dep't Stores Co. v. United States, AOD CC-1997-008 (Aug. 4, 1997).

In light of the decision in May Dep't Stores Co., the Service has reconsidered the time at which interest will begin to accrue on a deficiency assessed against a year in which the taxpayer has a credit. In Rev. Rul. 99-40, I.R.B. 1999-40, the Service explained that a tax that is due is not unpaid when a taxpayer has elected to apply a credit to the estimated tax payments for a succeeding year until the credit is applied to the succeeding year's estimated tax. See Id. (citing Treas. Reg. §§ 301.6402-3(a)(5) and 301.6611-1(h)(2)(vii)). Pursuant to Rev. Rul. 99-40, I.R.B. 1999-40, an overpayment is applied to the succeeding year's estimated tax when there is an unpaid installment and the overpayment is applied in the order in which the estimated payments are required to be paid to avoid an addition to tax for failure to pay estimated income tax under [I.R.C. §§ 6654 or 6655] with respect to such year.

On [REDACTED], [REDACTED] made an estimated tax payment in the amount of \$ [REDACTED]. [REDACTED], however, was required to pay \$ [REDACTED] in estimated taxes. Thus, [REDACTED] had underpaid its obligation in the amount of \$ [REDACTED]. Following Rev. Rul. 99-40, I.R.B. 1999-40, [REDACTED] is deemed to have avoided the additions to tax imposed by I.R.C. § 6655 because its second quarter estimated tax payment was satisfied by applying the entire amount by which [REDACTED] overpaid its [REDACTED] first quarter estimated taxes and \$ [REDACTED] of its [REDACTED] credit. Thus, \$ [REDACTED] remained from [REDACTED]'s [REDACTED] credit. Because this amount exceeds the amount of the later determined deficiency (\$ [REDACTED]), interest does not begin to accrue as of this date. For the third and fourth quarters in the [REDACTED] tax year, [REDACTED] made estimated tax payments in excess of the amounts due. Therefore, the remaining portion of the [REDACTED] credit was not deemed a payment on account of [REDACTED]'s estimated taxes in either of those quarters.

The facts in this case are indistinguishable<sup>1</sup> from the facts presented in Field Service Advice 199911001, accordingly, its analysis is applicable here. In Field Service Advice 199911001, the Service stated "in all cases, the overpayment is a payment of the succeeding year's income tax liability no later than the due date . . . of the succeeding year's income tax return." Thus, the [REDACTED] credit is deemed a payment on account of [REDACTED]'s [REDACTED] tax liability as of the due date of [REDACTED]'s [REDACTED] federal income tax return. Therefore, on the due date of [REDACTED]'s [REDACTED] federal income tax return interest began to accrue on the deficiency assessed against the [REDACTED] tax year.

If you have any questions or comments regarding this memorandum or the subject matter addressed, please do not hesitate to contact Michael E. Lueck at (313) 237-6437.

PHOEBE L. NEARING  
District Counsel

By: \_\_\_\_\_

MICHAEL E. LUECK  
Attorney

Attachments:  
As stated.

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<sup>1</sup>As in this case, Field Service Advice 199911001 involved a taxpayer that elected to apply a credit to the succeeding year. Furthermore, during the succeeding year, the taxpayer did not need the entire credit to avoid the additions to tax imposed by sections 6654 or 6655. Unlike this case, however, the taxpayer in Field Service Advice 199911001 did not apply any of the credit to one of the succeeding year's estimated tax payments. Our office believes the two cases are indistinguishable, however, because the controlling factor is whether the credit was ever reduced below the amount of the later determined deficiency.